

## BEFORE THE INDIAN CLAIMS COMMISSION

THE QUECHAN TRIBE OF THE FORT	)	
YUMA RESERVATION, CALIFORNIA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 320
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 21, 1971

## Appearances:

Raymond C. Simpson, Attorney for  
the Plaintiff,

M. Edward Bander, with whom was  
Assistant Attorney General Shiro  
Kashiwa, Attorneys for the Defendant.

OPINION ON MOTION TO REOPEN THE RECORD AND  
TO VACATE ORDER STAYING FURTHER PROCEEDINGS

Kuykendall, Chairman, delivered the opinion of the Commission.

On April 29, 1963, the Commission issued an order closing the record in this case on proof of title. On November 25, 1970, the Commission issued an Order staying further proceedings pending the outcome of legisla-  
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tion then before Congress. The proposed legislation was never enacted and has not been reintroduced.

On April 21, 1971, the plaintiff filed a motion to reopen the record on liability and to vacate the order staying further proceedings. It appears that plaintiff's counsel at the time of the 1962 title hearing has since died. The plaintiff, through its present attorney, operating under an attorney contract dated February 10, 1971, and approved by the Secretary of the Interior, alleges in support of the motion to reopen that the original petition filed in 1951 charged that on December 4, 1893,

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1/ The proposed legislation sought the return of the property in issue in this case, to the Quechan Indians.

the defendant and the plaintiff entered into an agreement whereby the plaintiff Indians agreed to accept allotments of their Executive order reservation lands in the amount of five acres of irrigable land per person and to relinquish the remainder of the reservation to the defendant. The petition further alleges that the 1893 Agreement was wholly nugatory, having been exacted without consideration, and under misrepresentation, duress and concealment of facts by the defendant; that the agreement presented to Congress was a forgery; and that the defendant further unilaterally and materially altered the 1893 Agreement by the Acts of August 15, 1894 (28 Stat. 286, 332), and April 21, 1904 (33 Stat. 189, 224), as amended by the Act of March 3, 1911 (36 Stat. 1058, 1063).

Pursuant to a Commission order of April 24, 1958, that certain causes of action in Docket No. 86 be stricken therefrom and included in Docket No. 320, the plaintiff's then attorney amended the petition in Docket No. 320 on June 24, 1958 to add a fifth cause of action premised on the 1893 Agreement being valid -- alleging that it was ratified by the 1894 Act -- and seeking damages for non-performance by the defendant. Plaintiff states that during the 1962 liability hearing the bulk of the evidence demonstrating the invalidity of the 1893 Agreement was not presented, and that during the oral argument plaintiff's former attorney abandoned the invalidity argument in favor of arguing for damages flowing from defendant's breaches of the 1893 Agreement.

Plaintiff now seeks to return to its original position, and contends that without a full presentation of evidence that the 1893 Agreement is

invalid, plaintiff is left in the vulnerable position of having its assertions to the contrary sustained, resulting in the loss of its land "as the result of a wholly invalid agreement."

Plaintiff urges that this Commission declare the 1893 Agreement to be invalid and that plaintiff has retained title to its land. Plaintiff argues that authority for such action is contained in Section 2, Clause (3) of the Indian Claims Commission Act (25 U.S.C. §70a). We disagree. Section 2, Clause (3) of the Indian Claims Commission Act grants jurisdiction to the Commission to hear and determine "claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity." The Commission and the courts have disclaimed jurisdiction over the validity of treaties between Indian tribes and the United States. In Sac and Fox Tribe v. United States<sup>2/</sup> the Commission held that the validity of a properly executed treaty is not open for ordinary judicial inquiry under any law or statute, or as regards the Commission under the Indian Claims Commission Act, that ratification imparts legality to a treaty, and that Congress alone has authority to abrogate or invalidate a treaty in whole or in part. The case is in line with earlier precedents. See United States v. Minnesota, 270 U.S. 181, 201 (1926); Lone Wolf v. Hitchcock, 187 U.S. 553,

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<sup>2/</sup> Docket No. 83, 7 Ind. Cl. Comm. 675, 710-712 (1959), aff'd on other grounds, 161 Ct. Cl. 189, 198, cert. denied, 375 U.S. 921 (1963).

567-568 (1903); Fellows v. Blacksmith, 19 How. 366, 372 (1856). The rationale applies equally to the ratified 1893 Agreement. It follows that the Commission is without authority to determine that the 1893 Agreement is invalid, and at most can determine monetary damages for fraud, duress, unconscionable consideration, etc. It is clear that under the circumstances the declaratory relief which the plaintiff seeks through presenting additional evidence of the invalidity of the 1893 Agreement cannot be achieved in this forum.<sup>3/</sup> However, although it would thus be futile to allow the plaintiff to produce additional evidence for the purpose sought in its pending motion, it is possible that the evidence would have some bearing on the amount of monetary damages, if any, recoverable.

In seeking to reopen the record it is incumbent upon the plaintiff not only to set out the evidence that it seeks to introduce, in order that the Commission may judge the sufficiency thereof, but to demonstrate that the evidence is material to the issue, is not merely cumulative, and that it is reasonably probable that a different result will be reached if the evidence is admitted. Combs v. Peters, 23 Wis. 2d 629, 127 N.W. 2d 750, 754 (1964); Re Eanelli's Estate, 260 Wis. 192, 68 N.W. 2d 791, 802, 803 (1955); Crouse v. McVickar, 207 N.Y. 213, 100 N.E. 697, 698 (1912). The plaintiff has not yet met its burden in this respect, but will be given an opportunity to describe the evidence it seeks to introduce, and to show its materiality, if any, in respect to monetary damages.

The defendant argues that the provisions of 25 U.S.C. §70v, as amended on April 10, 1967, by §70v-1, specifying that the Commission calendar all claims for trial prior to December 31, 1970, leaves the

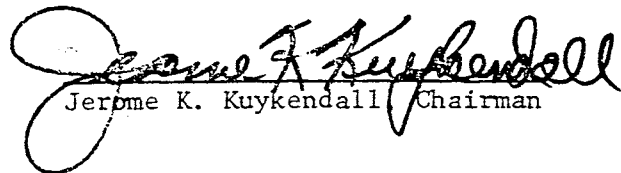
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<sup>3/</sup> See United States v. King, 395 U.S. 1, (1969), rev'g King v. United States, 182 Ct. Cl. 631, 390 F.2d 894 (1968).

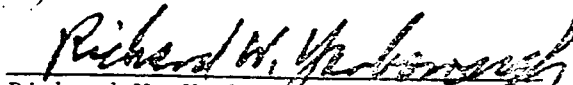
Commission without jurisdiction to hear any case not calendared prior to that date. The contention is without merit. The Commission has fully complied with 25 U.S.C. §70v, as amended. It is within the discretion of the Commission to reopen the record of pending cases as warranted by the facts, in order that the purposes of the Indian Claims Commission Act, in equitably settling cases, not be thwarted.


The defendant further argues that the plaintiff's motion should be denied because the plaintiff has had ample opportunity to present all relevant evidence, and the parties' proposed findings explore in depth the circumstances surrounding the execution of the 1893 Agreement. Because of the peculiar circumstances of this case, including the alleged differences of language and culture between the parties allegedly resulting in lack of communication and understanding, and due to the death and replacement of plaintiff's counsel, it is our opinion that the plaintiff should be offered an opportunity to present fully its case. An appropriate order will be issued.

Concurring:

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner